

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

21-CR-6023DGL

v.

ERNESTO JAVIER GONZALEZ,

Defendant.

Defendant Ernesto Gonzalez (“Gonzalez”) pleaded guilty to conspiracy to distribute five kilograms or more of cocaine. Gonzalez pleaded guilty on December 5, 2022, pursuant to a Plea Agreement which was filed on December 8, 2022. That Plea Agreement contained a provision, Section VIII, in which the defendant agreed to forfeit a 2011 Toyota Venza and the sum of \$142,550, seized from his apartment at 132 Holyoke Street in Rochester. Gonzalez was sentenced principally to a term of 72 months imprisonment and the Judgment was entered on May 24, 2023.

Gonzalez now moves, *pro se*, for Return of Property pursuant to Fed. R. Crim. P. 41(g). (Dkt. #177). The Government filed a detailed Response (Dkt. #180) opposing their requested relief in all respect.

Defendant’s motion for return of property relates to items seized from 26 DePew Street in Rochester on September 29, 2021, not the seizure mentioned in the Plea Agreement on April 8, 2020 at 132 Holyoke Street, Rochester, New York. That search and other evidence resulted in

the instant narcotics indictment against Gonzalez and a co-defendant, Miraida Ivette Melendez Lopez, which resulted in Gonzalez's 72-month term of imprisonment.

As the Government notes in its Response, unrelated to the federal indictment, Gonzalez and the co-defendant were arrested on September 29, 2021 and charged with firearms offenses. Rochester Police Department and others executed a search warrant at 26 DePew Street, Rochester. His arrest resulted in a violation notice filed against Gonzalez concerning his conditions of release on the federal indictment. The state search warrant resulted in a seizure of a 2014 Dodge Ram pickup truck, two Apple watches, \$14,733 in currency, plus two iPhone 12 Pro Maxs.

The Government's Response indicates that the items seized by the Rochester Police during the search of 26 DePew Street were never turned over to the federal government. In fact, two iPhones and the two Apple watches appear to be still held by the Rochester Police Department's Property Clerk.


As to the 2014 Dodge Ram pickup truck, that vehicle was also never transferred to federal custody. The \$14,733 was administratively forfeited by the United States Department of Homeland Security after properly publishing its intent to do so. No claim was made to the money.

The Government argues that this Court has no subject matter jurisdiction over the items seized by state law enforcement officials since they were never in federal custody, either actual or constructive. The currency has now been forfeited and the items requested are not now or ever were in federal custody. Similarly, Gonzalez has not established that he is a person in interest and aggrieved by the seizure.

CONCLUSION

Defendant Ernesto Javier Gonzalez's motion for Return of Property (Dkt. #177) is
DENIED.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is positioned above a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
November 27, 2023.